IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4197 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VADODARA DISTRICT PANCHAYAT - Petitioner(s)

Versus

FULSINH PRABHATSINH PARMAR MUKAM : SHERAPURA - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR KAUSHAL D PANDYA for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/08/2005

ORAL JUDGMENT

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1. This petition is directed the judgment and award dated 20th October, 1999 passed by the Labour Court, Vadodara in Reference No. 452 of 1992 whereby the Labour Court has directed the petitioner to reinstate the respondent with continuity in service along with 50% back

wages.

2. The short facts of the case are that the respondent was working as a Helper with the petitioner since the year 1973. The petitioner without following any procedure under the Industrial Disputes Act, 1947, terminated his service in the year 1989. Feeling aggrieved by the said action, the respondent raised an industrial dispute which was ultimately referred to the Labour Court for adjudication. The Labour Court after considering the materials produced before it passed the impugned award. Hence, this petition.

3. I have heard the learned counsel for the parties and have perused the materials produced on record. While admitting the matter on 24th September, 2001, this Court has stayed the operation of the impugned award subject to compliance of Section 17B of the Industrial Disputes Act. Having gone through the award it transpires that the Labour Court has not committed any error in ordering to reinstate the respondent in service. The Labour Court found that the respondent had completed 240 days work. Thus, I am in complete agreement with the reasonings adopted and findings arrived at by the Labour Court for

awarding reinstatement with continuity in service to the respondent.

4. So far as the aspect of back wages is concerned, it appears that the Labour Court has not given any cogent reasons while awarding back wages to the respondent. An order of payment of back wages cannot be passed in a mechanical manner, but a host of factors are to be taken into consideration before passing any such order. In the present case, the Labour Court has awarded back wages as a matter of course.

4.1. Moreover in the principle laid down by the Apex Court in the case of **Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p. 176** and in the case of **General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005 (6) S.C. p. 137 [2005 (5) S.C.C. p. 591]**, the respondent herein cannot be said to be entitled for back wages. Hence, the impugned award qua granting the back wages is required to be quashed and set aside.

5. In the result, the petition is partly allowed. The impugned award dated 20th October, 1999 passed by the

Labour Court, Vadodara in Reference No. 452 of 1992, qua back wages is quashed and set aside and rest of the award is confirmed. The petitioner shall reinstate the respondent within one month from today and shall grant all the benefits from the date of award till his actual reinstatement. The said benefits to be given within a period of six months from the date of receipt of writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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